

Montana Water Court
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FILED
01/17/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41H-0115-R-2022
Nordlund, Julia
7.00

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
GALLATIN RIVER BASIN (41H)
PRELIMINARY DECREE

CLAIMANTS: Diana A. Flynn; William E. Flynn

OBJECTOR: City of Bozeman

NOTICE OF INTENT TO APPEAR: Four Corners County
Water & Sewer District

CASE 41H-0115-R-2022
41H 115636-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. Claim 41H 115636-00 appeared in the Preliminary Decree for Basin 41H with Montana Department of Natural Resources and Conservation (DNRC) issue remarks. The claims received an objection from City of Bozeman and notice of intent to appear from Four Corners County Water & Sewer District.

2. On September 7, 2022, a Stipulation was filed between City of Bozeman and Claimants wherein City of Bozeman agreed to withdraw its Objection with no expansion of claim 41H 115636-00, but with a correction to change the priority date to 10/8/1909.

3. On November 7, 2022, the NOIA Four Corners filed a response to the Stipulation. The Response states the Notice of Intent to Appear is resolved based on the Court's acceptance of the Stipulation.

4. Claim 41H 115636-00 has two issue remarks stating:

THE PLACE OF USE OF THIS RIGHT WAS ALSO CLAIMED BY THE CLAIMANT OF FILE NO. 41H 114945-00. THE WATER COURT DECREES THIS RIGHT AND MAKES BOTH CLAIMS A MATTER OF RECORD.

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A FILED APPROPRIATION ON THE WEST GALLATIN RIVER WITH A PRIORITY DATE PREDATING CASE NO. 3850 , GALLATIN COUNTY.

5. These issue remarks provide notice to the water users of potential issues. No Objections remain on the claim and the remarks can be removed.

CONCLUSIONS OF LAW

1. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. Section 85-2-248(3), MCA.

2. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie proof may be

contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that an element of the prima facie claim is incorrect. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

3. The degree or weight of evidence needed to contradict or overcome the prima facie proof statute is a preponderance of the evidence. *Burkhartsmeier et al. v. Burkhardtmeier et al.*, Case 40G-2, (MT Water Court Memorandum Opinion and Order Adopting Master's Report, Mar. 11, 1997). The Montana Supreme Court has defined preponderance as "a relatively modest standard that the statutory criteria are 'more probable than not' to have been met." *Hohenlohe v. State*, 2010 MT 203 ¶ 33, 357 Mont. 438, 240 P.3d 628.

4. The Montana Water Court is permitted to use information submitted by the Department of Natural Resources and Conservation, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.

5. The issues raised by issue remarks must be resolved as part of the adjudication process pursuant to Section 85-2-248, MCA.

6. The remaining issue remarks have served their purpose of providing notice of the changes and potential issues and can be removed.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court make the changes specified above to correct the Preliminary Decree for this Basin. Post Decree Abstracts of Water Right Claims are served with this Report to confirm that the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H**

Water Right Number: 41H 115636-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: WILLIAM E FLYNN
8081 THORPE RD
BOZEMAN, MT 59718 8567

DIANA A FLYNN
8081 THORPE RD
BOZEMAN, MT 59718 8567

Priority Date: OCTOBER 8, 1909
Type of Historical Right: FILED
Purpose (use): IRRIGATION
Irrigation Type: SPRINKLER/FLOOD
Flow Rate: 238.00 GPM
***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.
Climatic Area: 4 - MODERATELY LOW
Maximum Acres: 20.20
Source Name: WEST GALLATIN RIVER
Source Type: SURFACE WATER
Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNWSW	35	1S	4E	GALLATIN
Period of Diversion:	APRIL 15 TO OCTOBER 15					
Diversion Means:	HEADGATE					
Ditch Name:	KNADLER DITCH					
Period of Use:	APRIL 15 TO OCTOBER 15					
Place of Use:						

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	20.20		N2SENE	22	1S	4E	GALLATIN
Total:	20.20						